

REMARKS

Claims 1, 2, 7, 11-17, 19-21, 23 and 81-104 were presented for examination. The Examiner rejected claims 1, 19-20 23, and 86 under 35 U.S.C. 103(a) as obvious in view of Final Fantasy Anthology: Collector's Edition as described on a number of websites. The Examiner rejected claim 23 under 35 U.S.C. 103(a) as unpatentable over Final Fantasy in view of www.samgoody.com. The Examiner rejected claims 11-17, 81, and 83 under 35 U.S.C. 103(a) as unpatentable over Final Fantasy in view of Karaoke Revolution in further view of Karaoke Revolution FAQs (<http://www.gamefaqs.com/console/ps2/file/914993/28658>). The Examiner rejected claims 84-85 under 35 U.S.C. 103(a) as unpatentable over Final Fantasy in view of Karaoke Revolution further in view of one of ordinary skill. The Examiner rejected claims 87-89 and 95-104 under 35 U.S.C. 103(a) as unpatentable over Karaoke Revolution in further view of XBOX Live Launch Center. The Examiner rejected claims 90-92 under 35 U.S.C. 103(a) as unpatentable over Karaoke Revolution in view of one of ordinary skill. The Examiner rejected claims 2 and 93 under 35 U.S.C. 103(a) as unpatentable over Karaoke Revolution in view of Dance Dance Revolution and in further view of Amplitude. The Examiner rejected claims 7 and 94 under 35 U.S.C. 103(a) as unpatentable over Karaoke Revolution in view of Dance Dance Revolution and in further view of U.S. Patent 6,514,083 (Kumar). No claims are hereby amended, new independent claim 105 has been added, no new matter has been added.

Rejection of independent claim 1

The Examiner rejected claim 1 under 35 U.S.C. 103(a) as anticipated by the Final Fantasy Anthology: Collector's Edition. The Examiner posits that selling games with soundtracks is known, therefore it would have been obvious to one of ordinary skill in the art to sell a music-based game together with the music the game is based on, and in a playback format. The Examiner, upon failing to find a single instance of such a music-based game being sold with the music in playback format, states that the failure to do so in the Final Fantasy Anthology: Collector's Edition was a "mere design choice." However, the Examiner's own arguments illustrate that the inclusion of music in a playback format along with the game the music is based on is more than a "design choice." (Office Action, p 3) As the Examiner states such inclusion

would be useful “as a study aid” and to enable to player to practice “away from the gaming system.” (Office Action, p 4). The Examiner thus admits that the combination of a music-based game along with a playable form of the music is a combination that is more than the sum of its parts.

Again, the present claims are not directed simply to the idea of selling a game and a game soundtrack together--applicant is aware of, and has cited to the Patent Office, a number of games which have been sold along with a soundtrack. Rather, the present claims are directed to basing a portion of a game on a piece of music, and then selling both the portion of the game and the music together. The cited references fail to teach or suggest such an “offering for sale, as a single unit, an article of manufacture which embodies the quantum of music content in a music playback format and the computer-readable medium embodying the portion of the created video game” as required by independent claim 1.

Rejection of dependent claims 2, 7, 11-17, 19-21, 23 and 81-86

The Examiner rejected claims 2, 7, 11-17, 19-21, 23 and 81-86, which depend from claim 1, over various combinations of the Final Fantasy Anthology: Collectors Edition, www.samgoody.com, Karaoke Revolution, Dance Dance Revolution, Amplitude, and Kumar. As argued above, the Final Fantasy Anthology: Collectors Edition does not teach or suggest “offering for sale, as a single unit, an article of manufacture which embodies the quantum of music content in a music playback format and the computer-readable medium embodying the portion of the created video game” as required by claim 1, from which each of these claims depends. Applicants respectfully submit that none of the other cited references cure this deficiency, as none describe bundling any game with a soundtrack in a music playback format.

Again, the Examiner has identified the synergies of providing a music based game along with its soundtrack as a single article, illustrating the combination does more than the sum of its parts. This, along with the disincentives Applicant has previously identified for providing such a combination—including the increased cost of the game, the difficulty of obtaining the necessary music licenses, and the likelihood that including such a CD may be forcing buyers to purchase tracks they already own—argue strongly against a finding of obviousness. Applicant thus submits it would not be obvious to one of ordinary skill in the art, in view of the cited references,

to “offer[] for sale, as a single unit, an article of manufacture which embodies the quantum of music content in a music playback format and the computer-readable medium embodying the portion of the created video game” as required by dependent claims 2, 7, 11-17, 19-21, 23 and 81-86.

Rejection of Independent Claim 87

The Examiner rejected claim 87 under 35 U.S.C. 103(a) as unpatentable over Karaoke Revolution in further view of XBOX Live Launch Center. Applicant respectfully submits that neither of the cited references teach or suggest “offering, via an online store, as a single unit the quantum of music content in a music playback format and the portion of the created video game.” The Examiner cites the “Training” mode of Karaoke Revolution as providing a means within the game for a player to hear a song without being scored or rated (Office Action, p. 5). However, this does not comprise a “music playback format” within the meaning of claim 87. A “music playback format” requires that the music be playable outside the context of the game, such as, for example, a format playable by a standard CD or DVD player. (See e.g. Application, p 16). Neither the Karaoke Revolution reference nor XBOX Live make any mention of downloading music content from the game in a separately playable format—the songs are only playable in modes with explicit gameplay elements (even if those elements are not required for a player to progress). As argued above including such separate content would not have been obvious to one of ordinary skill in the art due to the licensing and practical difficulties. Thus neither of the cited references teach or suggest “offering, via an online store, as a single unit the quantum of music content in a music playback format and the portion of the created video game.”

Rejection of Dependent Claims 88-104

The Examiner rejected claims 88-104, all of which depend from claim 87, over various combinations of Final Fantasy Anthology: Collectors Edition, www.samgoody.com, Karaoke Revolution, Dance Dance Revolution, XBOX Live Launch Center, Amplitude, and Kumar. As argued above, none of these cited references describe any bundling of music content in a music playback format along with a game based on the music content. Thus none of the cited

references teach or suggest “offering, via an online store, as a single unit the quantum of music content in a music playback format and the portion of the created video game” as required by claims 88-104.

CONCLUSION

In view of the above remarks and amendments, Applicant believes the pending application is in condition for allowance.

Please charge any additional necessary fees or credit any overpayments to Deposit Account No. 03-1721.

Respectfully submitted,
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